

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Evelis Otero	Team: Team # 3	CCRB Case #: 201114446	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Monday, 10/24/2011 7:40 PM	Location of Incident: § 87(2)(b)	Precinct: 81	18 Mo. SOL 4/24/2013	EO SOL 4/24/2013	
Date/Time CV Reported Fri, 11/04/2011 11:49 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Fri, 11/04/2011 11:49 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Mark Xylas	11251	948160	081 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Favio Quizhpi	08682	948119	081 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Mark Xylas	Force: PO Mark Xylas struck § 87(2)(b) with a nightstick.	§ 87(2)(b)
B.POM Mark Xylas	Abuse: PO Mark Xylas damaged § 87(2)(b) and § 87(2)(b)'s property.	§ 87(2)(b)
C.POM Mark Xylas	Abuse: PO Mark Xylas threatened to arrest § 87(2)(b)	§ 87(2)(b)

Case Summary

On November 4, 2011, § 87(2)(b) filed this complaint with the CCRB via the call processing system (enc. B-1 – B-2). On October 24, 2011, at approximately 7:40 p.m., § 87(2)(b) a caseworker from the Administration of Children's Services (ACS), called 911 to report that she responded to § 87(2)(b) in Brooklyn to conduct an investigation regarding allegations of child abuse and § 87(2)(b) prohibited her from entering the location. PO Mark Xylas and PO Favio Quizhpi of the 81st Precinct responded to the location shortly thereafter. PO Xylas ultimately issued a § 87(2)(b) summons to § 87(2)(b). The following allegations resulted from the officer's actions:

- **Allegation A – Force: PO Mark Xylas struck § 87(2)(b) with a nightstick.**
- **Allegation B – Abuse of Authority: PO Mark Xylas damaged § 87(2)(b) and § 87(2)(b)'s property.**
- **Allegation C – Abuse of Authority: PO Mark Xylas threatened to arrest § 87(2)(b)**

§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)

Results of Investigation

Civilian Statements

Complainant/Victim: § 87(2)(b)

- § 87(2)(b) was § 87(2)(b) old at the time of the incident. He is a Hispanic male who is 5'8" tall, weighs 160 pounds and has black hair and brown eyes.

CCRB Testimony

§ 87(2)(b) was interviewed at the CCRB on December 15, 2011. § 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)

On October 24, 2011, at approximately 6:00 p.m., § 87(2)(b) received a call from his wife, § 87(2)(b) who told him that she needed to buy some groceries. § 87(2)(b) instructed his wife to go to the supermarket and that he would meet her there shortly. § 87(2)(b) left their residence, located at § 87(2)(b) in Brooklyn, and went to the local supermarket, which is approximately 10 minutes away. The § 87(2)(b)'s children, § 87(2)(b) (age § 87(2)(b)) and § 87(2)(b) (age § 87(2)(b)) remained in their residence with three guests who were visiting temporarily from Spain, § 87(2)(b) (age § 87(2)(b)) (age 34) and their child, § 87(2)(b) (age § 87(2)(b)).

At approximately 7:00 p.m., § 87(2)(b) joined his wife at the supermarket. While shopping for groceries, § 87(2)(b) received a call from § 87(2)(b) on her cell phone. § 87(2)(b) informed her mother that an unidentified black female was ringing their intercom. § 87(2)(b) later learned that this female is a caseworker for the Administration for Children's Services (ACS), who was identified via the investigation as § 87(2)(b). § 87(2)(b) was instructed to go to the window, since the intercom speaker doesn't work, to tell the unidentified female that she could not open the door because her parents were not home. She then disengaged the call. § 87(2)(b) called back shortly thereafter and told her mother that § 87(2)(b) threatened to call 911 and told her that she would have officers break down the door. As § 87(2)(b) was talking on the phone with § 87(2)(b), § 87(2)(b) called § 87(2)(b) on his cell phone. § 87(2)(b) told his father that § 87(2)(b) was causing trouble. They then disengaged the call.

Shortly thereafter, § 87(2)(b) received a call from § 87(2)(b) who identified herself as a caseworker from ACS. § 87(2)(b) informed her that he was grocery shopping and would return shortly.

§ 87(2)(b) told § 87(2)(b) that she didn't have to wait and instructed him to tell his children to open the door. § 87(2)(b) argued with § 87(2)(b) saying that it was his house and that she was not allowed to enter until he and his wife were present. § 87(2)(b) told § 87(2)(b) that it was her job and that she had the right to enter. § 87(2)(b) then disengaged the call. Afterwards, § 87(2)(b) called 911 and made his way home with his wife.

At approximately 7:40 p.m., § 87(2)(b) and § 87(2)(b) returned home. § 87(2)(b) was waiting outside and appeared upset. § 87(2)(b) asked her what she wanted. § 87(2)(b) told § 87(2)(b) that she needed to enter his residence. § 87(2)(b) refused. § 87(2)(b) raised her voice and told § 87(2)(b) that there was an investigation about children being left unattended in his residence. § 87(2)(b) asked to see her ACS identification card but she refused. § 87(2)(b) told § 87(2)(b) that he needed to not only see her identification card but also wanted to see a warrant before he would allow her to enter. § 87(2)(b) told her husband that he should allow her to enter because they had nothing to hide. As they were talking, the § 87(2)(b)'s children and guests came downstairs to see what was happening. At this time, § 87(2)(b) became aware that the children had not been left unattended. The ACS case worker explained that she believed the children were left unattended because no adults came to the window. After some back and forth discussion about this, § 87(2)(b) asked § 87(2)(b) to let her into the residence, which he did.

Once inside the residence, which is clean and organized, § 87(2)(b) asked § 87(2)(b) for his name. § 87(2)(b) interjected, saying that if she had any questions she could ask him and not his children. § 87(2)(b) again explained that it was her job. § 87(2)(b) then received a phone call. § 87(2)(b) disengaged shortly thereafter and exited § 87(2)(b)'s residence without saying anything. Shortly thereafter, two officers, identified via the investigation as PO Mark Xylas and PO Favio Quizhpi of the 81st Precinct, rang § 87(2)(b)'s intercom. Everyone went downstairs. § 87(2)(b) opened the door and saw the officers. The officers asked § 87(2)(b) to step outside but he refused. The officers informed § 87(2)(b) that he was interfering with § 87(2)(b)'s investigation. § 87(2)(b) argued with the officers saying that this was his house and that they did not have the right to enter. PO Xylas brandished his nightstick and using the handle of the nightstick tried to pull § 87(2)(b) by his neck. § 87(2)(b) moved and the nightstick slipped off his neck. PO Xylas was unable to pull § 87(2)(b) out of his residence. PO Xylas then swung his nightstick towards § 87(2)(b)'s face. § 87(2)(b) blocked the impact of the strike with his hand. However, the nightstick still made contact with his face. § 87(2)(b) sustained swelling to his hand and contusions to his face as a result.

§ 87(2)(b)'s guests became upset and started to yell. The § 87(2)(b)'s children started to cry. § 87(2)(b) demanded to know why PO Xylas hit him. PO Xylas reiterated that § 87(2)(b) was not letting § 87(2)(b) do her job. § 87(2)(b) told PO Xylas that she was rude and had never identified herself, but that he ultimately let her into his residence. The officers pushed their way into the house and called for additional units. PO Xylas pushed § 87(2)(b) to the floor and handcuffed him. § 87(2)(b)'s glasses fell to the floor when he was pushed down. PO Xylas inadvertently stepped on § 87(2)(b)'s glasses, destroying them. § 87(2)(b) took photos as the officers handcuffed § 87(2)(b). PO Xylas took § 87(2)(b)'s phone and deleted most of the photos she took. PO Xylas returned the phone to § 87(2)(b) later on. § 87(2)(b) was then placed on his feet and walked outside.

PO Xylas searched § 87(2)(b) and retrieved from his pocket a pen-like device that detects electricity and lights up in red. PO Xylas asked what the device was. § 87(2)(b) in spite, told PO Xylas that it was a bomb that would "blow him up for being a jerk." PO Xylas panicked and started to tell the other officers that § 87(2)(b) possessed a bomb. § 87(2)(b) laughed and called PO Xylas a coward and mockingly instructed him to call for helicopters and the K-9 Unit. PO Xylas realized that § 87(2)(b) had lied about the device being a bomb and told him that he had no way of knowing what the device was. PO Xylas took apart the device and threw it to the ground, damaging it. § 87(2)(b) was then placed in an RMP. § 87(2)(b) did not provide a photo or any other evidence of the alleged damage. Four additional unidentified uniformed officers arrived on the scene, but they did not participate in this incident.

While § 87(2)(b) was in the RMP, § 87(2)(b) complained because she was upset with the officers' actions. PO Xylas told § 87(2)(b) to "shut up or she'd be arrested." The officers ran § 87(2)(b)'s name for warrants and found none. § 87(2)(b) was issued a § 87(2)(b) summons, number § 87(2)(b), and was released on the scene. The officers then left the location. § 87(2)(b) who remained in a parked vehicle nearby, told § 87(2)(b) that she would see him in a week. § 87(2)(b) did not seek medical treatment subsequent to this incident. When § 87(2)(b) filed this complaint, he did not make any property damage allegations nor did he claim that any officer threatened to arrest his wife.

Witness: § 87(2)(b)

- § 87(2)(b) was § 87(2)(b) old at the time of the incident. She is a black female who is 5'2" tall, weighs 120 pounds and has brown hair and brown eyes. § 87(2)(b) is a caseworker for ACS.

CCRB Testimony

§ 87(2)(b) was interviewed at the CCRB on May 10, 2012 (enc. C-6 – C-10). On October 24, 2011, at approximately 7:40 p.m., § 87(2)(b) responded to § 87(2)(b) in Brooklyn to investigate allegations of domestic violence involving the parents of the children who reside at the location. § 87(2)(b)'s intake report also noted that the father, § 87(2)(b) had mental health issues. § 87(2)(b) rang the doorbell and two children, who appeared to be between the ages of § 87(2)(b) years old, came to the window. § 87(2)(b) asked the children if their parents were home and they said no.

§ 87(2)(b) called § 87(2)(b)'s phone number, which was listed on the intake report. § 87(2)(b) answered and § 87(2)(b) explained the situation. § 87(2)(b) informed her that he was in "no rush to come home," and became irate and belligerent over the phone, screaming and yelling, saying that he could not understand why she was at his residence. § 87(2)(b) informed § 87(2)(b) that if he did not return in a reasonable amount of time that she would call 911 because his children were home alone. They then disengaged the call. After waiting 20 minutes, § 87(2)(b) called § 87(2)(b) again. § 87(2)(b) informed § 87(2)(b) that he was in the grocery store. § 87(2)(b) then called 911.

§ 87(2)(b) arrived at the location before officers were able to respond. § 87(2)(b) screamed and yelled at § 87(2)(b) and got very close to her face. § 87(2)(b)'s wife, § 87(2)(b) was also present but she was calm and did not involve herself. § 87(2)(b) feared for her safety because of § 87(2)(b)'s behavior, so she called 911 a second time. The 911 dispatcher informed § 87(2)(b) that officers would arrive shortly. § 87(2)(b) and § 87(2)(b) entered their residence and did not allow § 87(2)(b) to enter.

Approximately five minutes later, two uniformed male officers, identified via the investigation as PO Mark Xylas and PO Favio Quizhpi of the 81st Precinct, arrived on the scene. § 87(2)(b) explained the situation to the officers. § 87(2)(b) came downstairs and exited his residence at this time. § 87(2)(b) spoke loudly and acted belligerent when speaking to the officers. § 87(2)(b) yelled in Spanish and PO Quizhpi, who spoke Spanish as well, responded to § 87(2)(b). PO Quizhpi asked him to speak in English, as his partner did not understand what he was saying. The officers repeatedly asked § 87(2)(b) to calm down but he refused. The officers informed § 87(2)(b) that they needed to escort § 87(2)(b) upstairs. § 87(2)(b) then willingly allowed the officers and § 87(2)(b) to follow him into his house. Neither of the officers brandished their nightsticks or otherwise attempted to pull or strike him with it.

Upon entering § 87(2)(b) § 87(2)(b) became belligerent again. He turned to the officers while in the hallway, yelled at them and got in their faces. § 87(2)(b) gestured often with his hands when he spoke and his hands were in the officers' faces. § 87(2)(b) and their 3 children came downstairs at this time. It was at this time that § 87(2)(b) realized that there was an older child, who was approximately § 87(2)(b) years old, with the younger ones at home. The officers repeatedly asked § 87(2)(b) to calm down but he did not. § 87(2)(b) also asked § 87(2)(b) to calm down but he refused. § 87(2)(b) repeatedly said that "this was his house" and that "he paid the bills." § 87(2)(b) continued to yell and scream and refused to comply with repeated orders from the police. Ultimately, the officers pushed § 87(2)(b) to the floor and handcuffed him.

While § 87(2)(b) was on the floor, he told his wife to take pictures of the officers. § 87(2)(b) took photos of the officers with her cell phone. Neither of the officers took her cell phone away at any point. § 87(2)(b) and her children complained to the officers, asking them to get off him. § 87(2)(b) was loud and yelled at the officers but they did not threaten to arrest her. Neither of the officers stepped on § 87(2)(b)'s glasses. § 87(2)(b) was picked up from the ground after being handcuffed and they checked him for warrants. Neither of the officers took an item out of § 87(2)(b)'s pocket and destroyed it. § 87(2)(b) was released after he was checked for warrants and was much more calm. The officers asked § 87(2)(b) if she felt comfortable entering his residence alone and she said that she did. The officers left the scene and § 87(2)(b) entered § 87(2)(b)'s residence to conduct her investigation. § 87(2)(b) had remained by the officers' side throughout this entire incident.

Attempts to Identify and Contact Additional Victims and Witnesses

- § 87(2)(b) identified his guests, § 87(2)(b) and § 87(2)(b) as witnesses for this incident. However, § 87(2)(b) refused to provide contact information for them and stated that they returned to Spain after this incident. To date, the CCRB has been unable reach § 87(2)(b) and § 87(2)(b).
- § 87(2)(b) also identified his wife, § 87(2)(b) as a victim for this incident. However, § 87(2)(b) refused to provide a direct phone number for her and instructed the investigator to reach § 87(2)(b) through his number. The investigator tried contacting § 87(2)(b) on April 18, 2012. § 87(2)(b) answered and explained that § 87(2)(b) and their children left New York and moved permanently to Florida. § 87(2)(b) refused to provide contact information for § 87(2)(b) but stated that he would contact her and pass my information along to her. A subsequent call was made to § 87(2)(b) on May 10, 2012 and a detailed message was left with him, instructing him to have his wife contact the CCRB. The investigator received a voice message from § 87(2)(b) on May 25, 2012, in which she requested a call back and left a phone number at which she could be reached. A call was made to the aforesaid number on June 19, 2012. However, the call did not go through. A subsequent call was made on July 10, 2012. However, the number was disconnected. A search of Lexis Nexis for Florida yielded negative results. To date, the CCRB has been unable to reach § 87(2)(b).

NYPD Statements

Subject Officer: PO MARK XYLAS

- PO Xylas was § 87(2)(b) old at the time of the incident. He is a white male who is 6'0" tall, weighs 235 pounds and has brown hair and hazel eyes.
- On the day of the incident, PO Xylas was assigned to patrol sectors F and H within the confines of the 81st Precinct. He worked in uniform from 3 p.m. to 11:35 p.m., with PO Favio Quizhpi.

Summons

PO Xylas issued summons number § 87(2)(b) to § 87(2)(b) for § 87(2)(b) (enc. D-1).

Memo Book

PO Xylas' memo book notes verbatim that, "At 7:07 p.m., ACS help. At 7:15 p.m., One male stopped for § 87(2)(b) at § 87(2)(b). Father of family under investigation was fighting with police and refusing to comply with orders and was handcuffed. At 7:50 p.m., 10-96 summons issued (enc. D-2 – D-3)."

CCRB Testimony

PO Mark Xylas was interviewed at the CCRB on October 11, 2012 (enc. D-4 – D-6). On October 24, 2011, at approximately 7:30 p.m., PO Xylas and PO Quizhpi arrived at § 87(2)(b) in Brooklyn, in

response to a call received from a caseworker for the Administration for Children's Services (ACS), identified via the investigation as § 87(2)(b) who was in need of assistance. Upon their arrival, PO Xylas and PO Quizhpi spoke with § 87(2)(b) who informed PO Xylas and PO Quizhpi that § 87(2)(b)'s child was being abused inside his apartment and that § 87(2)(b) refused to allow her inside.

PO Xylas and PO Quizhpi knocked on the building's front door. § 87(2)(b) opened the door and invited the officers in, stating, "We should talk inside." PO Xylas, PO Quizhpi, and § 87(2)(b) entered the vestibule area of the building. PO Xylas and PO Quizhpi explained to § 87(2)(b) that the ACS worker needed to see his child. § 87(2)(b) responded in Spanish. Since PO Xylas does not understand Spanish, PO Quizhpi translated § 87(2)(b)'s responses for PO Xylas. PO Quizhpi informed his partner that § 87(2)(b) refused to allow § 87(2)(b) in his residence because he did not understand the reason for her arrival, as his child was not being abused. PO Xylas and PO Quizhpi informed § 87(2)(b) that it was in his best interest to allow § 87(2)(b) in his home. At some point during the conversation, an unidentified female and child came down the stairs, at which point they were ordered to go back up the stairs.

Shortly thereafter, PO Xylas and PO Quizhpi ordered § 87(2)(b) to allow § 87(2)(b) to conduct the investigation. § 87(2)(b) refused and walked up the stairs. PO Xylas approached the staircase and walked up two to three steps. In response, § 87(2)(b) lightly shoved PO Xylas with both of his hands, in an effort to prevent PO Xylas from approaching him. PO Xylas believed that § 87(2)(b) did not push him with the intent to push him down the stairs. Feeling threatened, PO Xylas proceeded to hold § 87(2)(b)'s chest area and pulled § 87(2)(b) down the stairs onto the ground level. As PO Xylas guided § 87(2)(b) down the stairs, § 87(2)(b) held onto the banisters, refusing to go down the stairs. The unidentified female and child witnessed the altercation and yelled throughout its entirety. PO Xylas did not recall seeing any other civilians.

Once PO Xylas and § 87(2)(b) reached the ground floor, § 87(2)(b) resisted arrest, as he continuously flailed his arms and screamed, "Stop!" PO Quizhpi assisted PO Xylas in placing § 87(2)(b) on the floor, at which point § 87(2)(b) began tucking his arms underneath his body. Consequently, PO Xylas and PO Quizhpi pulled § 87(2)(b)'s arms and placed them in handcuffs, as § 87(2)(b) continued to yell and scream. Subsequently, PO Xylas walked § 87(2)(b) to their marked RMP. Sometime before § 87(2)(b) was placed in the police vehicle, § 87(2)(b) conducted her investigation. Moments later, PO Xylas requested a sergeant, and once a sergeant arrived on the scene, PO Xylas and PO Quizhpi explained the events that transpired to him. PO Xylas was unable to identify the sergeant that arrived on the scene. Afterwards, PO Xylas released § 87(2)(b) with a summons for § 87(2)(b). The unidentified female approached the police vehicle to inquire about what would happen next. Shortly thereafter, PO Xylas, PO Quizhpi, and the unidentified sergeant left the scene.

PO Xylas stated that neither he nor PO Quizhpi brandished their asps, and that neither of them struck § 87(2)(b) with their asps. PO Xylas did not recall stepping on § 87(2)(b)'s glasses. Furthermore, PO Xylas stated that neither he nor PO Quizhpi took § 87(2)(b)'s phone. PO Xylas indicated that the only time § 87(2)(b) was searched was when he placed him in the police car and that the search was conducted to ensure that § 87(2)(b) did not possess any weapons. No contraband or electricity detecting objects was discovered during the search. PO Xylas stated that he did not remove, toss, or step on any items from § 87(2)(b)'s pockets. Furthermore, PO Xylas indicated that § 87(2)(b) did not act in a disorderly manner during the incident and that he did not threaten to arrest her.

Witness Officer: PO FAVIO QUIZHPI

- *PO Quizhpi was § 87(2)(b) old at the time of the incident. He is a Hispanic male who is 5'6" tall, weighs 150 pounds and has black hair and brown eyes.*
- *On the day of the incident, PO Quizhpi worked the same assignment and tour as PO Mark Xylas.*

Memo Book

PO Quizhpi's memo book notes verbatim, "At 7:50 p.m., 10-96 (summons issued) by PO Xylas (enc. D-7 – D-9)."

CCRB Testimony

PO Favio Quizhpi was interviewed at the CCRB on October 11, 2012 (enc. D-10 – D-11) § 87(2)(b)

(g)

When the officers and § 87(2)(b) entered the vestibule area, PO Quizhpi and PO Xylas explained to § 87(2)(b) that the ACS worker needed to see the child because she received information that the child was being abused. In a “standoffish” tone, in Spanish, § 87(2)(b) asked the officers to explain why § 87(2)(b) arrived, as his child was not being abused. Subsequently, § 87(2)(b) ordered his child to go upstairs and, as to prevent § 87(2)(b) from walking up the stairs, § 87(2)(b) proceeded to stand on the staircase.

PO Quizhpi and PO Xylas pled with § 87(2)(b) to allow § 87(2)(b) to see the child and informed him that, once he did so, the officers would leave. However, § 87(2)(b) refused to allow § 87(2)(b) to conduct an investigation. Consequently, PO Xylas attempted to walk up the stairs. Meanwhile, PO Quizhpi was engaged in conversation with § 87(2)(b) and, therefore, did not witness what occurred between § 87(2)(b) and his partner while they were on the stairs. Sometime after the incident, PO Xylas informed PO Quizhpi that § 87(2)(b) pushed him as PO Xylas attempted to walk up the stairs. PO Xylas tried to restrain § 87(2)(b) by holding his arm and pulling him down the stairs toward the ground level. In response, § 87(2)(b) flailed his arms, pulled himself away from PO Xylas, and grabbed the handrail. PO Quizhpi then approached PO Xylas and assisted him in placing § 87(2)(b) on the ground.

Once § 87(2)(b) was on the ground, he flailed and tensed up his arms and moved his body around. For safety reasons, PO Quizhpi and PO Xylas placed § 87(2)(b) in handcuffs, as § 87(2)(b) was “acting up.” PO Xylas frisked and searched § 87(2)(b) and placed him in an RMP. § 87(2)(b) completed her investigation, and she informed PO Quizhpi and PO Xylas that the child was not being abused. § 87(2)(b) was then released with a summons for § 87(2)(b). Immediately thereafter, PO Quizhpi, PO Xylas, and § 87(2)(b) left the scene. § 87(2)(b) did not interfere at any point during the incident. PO Xylas denied all of the allegations.

NYPD Documents

SPRINT Report

SPRINT number § 87(2)(b) (enc. E-1 – E-4) indicates that at 6:55 p.m., ACS caseworker § 87(2)(b) called 911 to report that she was in front of § 87(2)(b) for approximately 30 minutes and that at least two children, one of which was § 87(2)(b) old, were left home alone. She informed the operator that she came to check on the children. § 87(2)(b) also reported that the children came to the window and informed her that their parents went out. At 7:01 p.m., § 87(2)(b) called 911 a second time to report that the father of the children, § 87(2)(b) was acting hostile towards her. At 7:03 p.m., § 87(2)(b) called 911 to report that § 87(2)(b) was at his residence giving them a “hard time.” He further stated that he won’t open the door for § 87(2)(b). The 911 operator reported a loud commotion in the background. § 87(2)(b) was heard screaming in the background saying, “Get out of my face.” § 87(2)(b) was also heard screaming in the background. § 87(2)(b) reported that they had just returned from shopping and that the children were not unattended because they were with their aunt. At 7:22 p.m., the officers assigned to sector F, identified via the investigation as PO Xylas and PO Quizhpi, arrived on the scene. At 8:24 p.m., a summons was issued.

Disposition of Summons for Incident

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Status of Civil Proceedings

- § 87(2)(b) has not filed a Notice of Claim with the City of New York with regard to the incident (enc. G-10a).

Criminal Conviction History

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

CCRB History of Civilians

- § 87(2)(b) and § 87(2)(b) have not filed a CCRB complaint prior to this incident (enc. A-2 – A-3).

CCRB History of Subject Officer

- PO Xylas has been a member of service for 3 years and there are no substantiated allegations against him (enc. A-1).

Conclusion

Investigative Findings and Recommendations

Identification of Subject Officer

- PO Xylas acknowledged interacting with § 87(2)(b) § 87(2)(g)

Allegation A – Force: PO Mark Xylas struck § 87(2)(b) with a nightstick.

Allegation B – Abuse of Authority: PO Mark Xylas damaged § 87(2)(b) and § 87(2)(b)'s property.

Allegation C – Abuse of Authority: PO Mark Xylas threatened to arrest § 87(2)(b)

§ 87(2)(b) alleged that PO Xylas brandished his nightstick and attempted to pull him by the neck with the nightstick, out of his house, when he refused to allow § 87(2)(b) to enter. § 87(2)(b) also alleged that PO Xylas then attempted to strike him with his nightstick in the face. However, § 87(2)(b) allegedly blocked the impact of the blow with his hand. § 87(2)(b) claimed to have sustained swelling to his hand and contusions to his face as a result. § 87(2)(b) also alleged that PO Xylas took § 87(2)(b)'s phone away when she took pictures of the officers as they handcuffed him and that he deleted several of those pictures from her phone. Additionally, § 87(2)(b) alleged that PO Xylas searched his pockets prior to being placed in the RMP and took an electricity-detecting device from his pockets and destroyed it by dismantling it and throwing it on the ground. Lastly, § 87(2)(b) alleged that PO Xylas told § 87(2)(b) to “shut up or she’d be arrested.” PO Xylas denied all of the allegations. PO Quizpi’s statement corroborated that of PO Xylas.

The civilian witnesses, § 87(2)(b) and § 87(2)(b) could not be reached for a statement. Additionally, the CCRB was unable to reach § 87(2)(b) for a statement. The ACS caseworker, § 87(2)(b) testified that § 87(2)(b) was disorderly and non-compliant throughout the entire incident. § 87(2)(g)

§ 87(2)(b) confirmed that she remained with the officers for the duration of this incident and denied witnessing any of the allegations.

§ 87(2)(b) was very specific in alleging that PO Xylas used the handle of his nightstick in an attempt to pull him out of his residence. PO Xylas testified that he carries an asp and not a nightstick. The asp is structurally different from a nightstick and it cannot be used as § 87(2)(b) alleged. § 87(2)(b) did not seek medical treatment § 87(2)(g)

§ 87(2)(g) Additionally, he did not provide any documented evidence to the CCRB, such as photographs or receipts, regarding the electricity-detecting device that was allegedly damaged by PO Xylas. Although neither officer could recall seeing § 87(2)(b) taking photographs on her cellphone, § 87(2)(b) confirmed that § 87(2)(b) ordered her to do so. However, § 87(2)(b) stated that PO Xylas did not take § 87(2)(b)'s cellphone at any point. The officers barely recalled seeing § 87(2)(b) during this incident. § 87(2)(b) acknowledged that § 87(2)(b) did not involve herself in this incident beyond taking photographs on her phone. § 87(2)(b) further confirmed that PO Xylas did not threaten to arrest her. § 87(2)(b) provided conflicting and embellished statements. When § 87(2)(b) filed this complaint, he did make any property damage or threat of arrest allegations. The only allegation § 87(2)(b) raised when he filed this complaint was that he was struck with the nightstick.

§ 87(2)(g)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Team: 3

Investigator:	<u>Evelis Otero</u>	<u>01/22/13</u>
	Signature	Date

Supervisor:	<u></u>	<u></u>
	Title/Signature	Date

Reviewer:	<u></u>	<u></u>
	Title/Signature	Date

Reviewer:	<u></u>	<u></u>
	Title/Signature	Date